

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

NORTHWEST AIRLINES, INC.,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 97-385-P-H
)	
ALLYN J. CARUSO, ET AL.,)	
)	
DEFENDANTS)	

ORDER ON CHOICE OF LAW

The plaintiff, Northwest Airlines, Inc., originally filed this case in the United States District Court for the District of Minnesota. The case was transferred to the United States District Court for the District of Maine upon a motion by the defendants Allyn J. Caruso and John Gallichon pursuant to 28 U.S.C. §1404(a).¹ Order, November 17, 1997, Docket Item 1C. The parties agree that Minnesota choice of law principles apply under the rule of Van Dusen v. Barrack, 376 U.S. 612, 639 (1964) (concluding that when venue is transferred upon the motion of a defendant, “the transferee district court must be obligated to apply the state law that would have been applied if there had been no change of venue”). See also Ferens v. John Deere Co., 494 U.S. 516, 523 (1990) (deciding that a transferee forum must “apply the law of the transferor court, regardless of who initiates the transfer”). The parties disagree about whether under Minnesota’s choice of law principles, the substantive law of fraud of Minnesota or New Hampshire should apply. The plaintiff argues that the

¹ David M. Hulick was also a defendant in the original case. On June 18, 1998, I granted the plaintiff’s motion for entry of judgment pursuant to Rule 54(b) as to the defendant Hulick. On the same date, the Clerk terminated Mr. Hulick as a party. Thus, Mr. Hulick is no longer a party to this suit.

substantive law of fraud of Minnesota should apply. The defendants argue that the substantive law of fraud of New Hampshire should apply. Applying Minnesota's choice of law methodology as it was articulated in Milkovich v. Saari, 203 N.W.2d 408 (Minn. 1973),² I find that Minnesota's law of fraud will be applied in this case.³

Minnesota's choice of law methodology requires the evaluation of five factors.⁴ Id. at 413. The first factor, the predictability of results, usually carries more weight in consensual transactions than in tort cases. Id. at 412, 416. However, unlike the car accident in Milkovich, the tort of fraud alleged in this case derives from the terms of certain consensual transactions, namely the Airline Services Agreements that bound the plaintiff and the defendants' airlines. Section 12.04 in both of the Airline Services Agreements specifies that Minnesota law governs these contracts. Klinkenberg Aff. at ¶ 2 and Exhs. A & B thereto, Docket Item 23. This choice of law clause weighs in favor of

² I am aware of the choice of law principles suggested by the Restatement (Second) of Conflict of Laws §§ 6, 145, 148 (1971). Since Minnesota has not adopted the approach of the Restatement, I have not applied it.

³ Since neither the plaintiff nor the defendants have argued that the exception for procedural rules carved out in Davis v. Furlong, 328 N.W.2d 150 (Minn. 1983), applies in this case, that argument has been waived, and I will treat the difference between Minnesota and New Hampshire (here, primarily burden of proof) as a question of substantive, not procedural, law.

⁴ Minnesota's choice of law analysis requires several preliminary showings before applying the five-factor approach. First, there must be a conflict that may be outcome determinative between the laws of the states at issue. H Enter. Int'l Inc. v. General Elec. Capital Corp., 833 F. Supp. 1405 (D. Minn. 1993). Here, at the very least, the standard of proof applied in fraud cases under the law of New Hampshire, the clear and convincing standard, and under the law of Minnesota, the preponderance of the evidence standard, yield a conflict that a jury may find to be outcome-determinative. Second, the states at issue must have sufficient contacts to satisfy the requirements of constitutional due process. Id. at 1414 (citing Allstate Ins. Co. v. Hague, 449 U.S. 302, 313-14 (1981) (plurality)). Since the parties have not raised the issue of the constitutionality of the application of either state's law, I have assumed that it is not in dispute and, indeed both states have sufficient contacts.

applying Minnesota fraud law to a fraud claim that is based on the nondisclosure of information that was related to the reporting requirements described in the Airline Services Agreements.

The second factor, the maintenance of interstate and international order, requires that the state whose law is applied has a “substantial connection with the facts and issue involved.” 203 N.W.2d at 417. This factor indicates that either Minnesota or New Hampshire law could be applied.

The third factor, the simplification of the judicial task, *id.*, is not helpful here because the availability of computerized databases renders the United States District Court for the District of Maine equally capable of applying the law of Minnesota and the law of New Hampshire.

The fourth factor, the advancement of the forum’s governmental interest, *id.*, supports the application of Minnesota law. This factor requires analyzing whether the application of the rule of the foreign state (New Hampshire) would be consistent with the “concept of fairness and equity,” *id.*, of the forum state, which, as the plaintiff argues and the defendants do not contest, is Minnesota here. (The rationale of both Van Dusen and Ferens also supports treating Minnesota, where the lawsuit was filed, as the forum state). Minnesota’s preponderance of the evidence standard of proof suggests that it endorses a policy of making it easier to weed out fraud than New Hampshire, whose higher standard of clear and convincing evidence makes it more difficult for a plaintiff to prove fraud than Minnesota’s law. Kornberg v. Kornberg, 542 N.W.2d 379, 388, n. 3 (Minn. 1996) (the standard of proof for civil fraud is a preponderance of the evidence); Snow v. American Morgan Horse Association, Inc., 686 A.2d 1168, 1170 (N.H. 1996) (the standard of proof for fraud under New Hampshire law is clear and convincing evidence). Applying New Hampshire law would thwart Minnesota’s interest in making fraud claims easier to prove.

The fifth factor, the better rule of law, supports the application of either Minnesota or New Hampshire law, because neither state has an obviously better rule of law on fraud than the other.

Here, the first and the fourth factors point to the application of Minnesota law, and the other factors have no effect. Accordingly, Minnesota's law of fraud will be applied in this case.

SO ORDERED.

DATED THIS 19TH DAY OF NOVEMBER, 1998

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE